

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.6178 OF 2005

AND

WRIT PETITION NO.22043 OF 2005

Dated: 23rd JULY, 2007.

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In W.P.No.6178 of 2005

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Between :

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M/s. Torus India Limited
(formerly known as M/s. Kinnera Steels Limited)
Factory at Industrial Estate, Kothagudem-517 101,
Khammam District, rep. By its Managing
Direcotr Mr. K.S. Ramarao ... Petitioner

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And

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1. Employees Provident Fund Organisation, Sub
Regional Office at A.P.S.F.C. Building, Balasamudram
Road, Hanamkonda, rep.by its Regional Provident
Commissioner and 2 others. ... Respondents

In W.P.No.22043 of 2005

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WRIT PETITION NO.6178 OF 2005

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COMMON ORDER :

These two writ petitions are filed aggrieved by the orders issued by the Assistant Provident Fund Commissioner, Warangal for recovery of the amounts payable by the petitioner under the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (for short, 'the Act').

The facts, in brief, are as under :

The petitioner is a company engaged in the manufacture and sale of Cold Twisted Bars used in the construction of buildings. The petitioner's establishment is covered under the provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (for short, 'the Act') from August 1989 onwards vide Code No.AP/WL/18984. It is not in dispute that the Assistant Provident Fund Commissioner after making due enquiry by order dated 12-11-2003 made under Section 7-A of the Act held that the petitioner is liable to pay a sum of Rs.1,28,595/- towards Provident Fund contributions for the period from 4/1999 to 9/2003 apart from a sum of Rs.37,982/- towards interest for the delay in remittance of PF dues.

While so, a prohibitory order dated 9-2-2004 was issued in exercise of powers under Section 8-F(3) of the Act directing the Unit Trust of India Bank which is holding the petitioner's account, to pay a sum of Rs.1,66,577/- being the amount in arrears payable by the

petitioner for the period from 4/1999 to 9/2003. However, since the petitioner had remitted the dues specified under the said prohibitory order, by letter dated 22-4-2004 the prohibitory order was revoked.

Subsequently, the second respondent issued a Recovery Certificate dated 12-4-2004 under Section 8-B of the Act directing the Recovery Officer to recover a sum of Rs.1,41,891/- allegedly due for the period from 4/1999 to 9/2003 which includes the PF arrears determined under Section 7-A as well as the interest payable under Section 7-Q of the Act.

Aggrieved by the same, the petitioner filed W.P.No.11129 of 2004 contending inter alia that the respondents have been demanding the amounts for the same period i.e., 4/1999 to 9/2003 without furnishing any particulars.

This Court, after hearing both the parties, disposed of the said writ petition by order dated 4-11-2004 directing the petitioner to approach the respondents for necessary particulars i.e., the amount recovered and adjusted under the various heads, and on making such request, the respondents shall furnish the amounts due from the petitioner after making adjustments of the amounts already recovered.

Pursuant to the order of this Court, the 1st respondent by letter dated 21-12-2004 informed the petitioner that after adjusting Rs.59,197/- a sum of Rs.67,060/- is still due from the petitioner for the period from 4/1999 to 9/2003 and called upon the petitioner to remit the said amount of Rs.67,060/- to avoid further recovery action. Since the petitioner failed to comply with the same, fresh prohibitory order dated 9-3-2005 was issued directing the UTI Bank to withhold a sum of Rs.67,060/- and remit the same forthwith to the respondents. Challenging the said action, W.P.No.6178 of 2005 has been filed contending inter alia that the petitioner is not liable to pay any contributions for the demand period from 4/1999 to 9/2003 as the petitioner company was closed and there was no work to the employees at the relevant point of time.

This Court while directing notice to the respondents, by order dated 24-3-2005 suspended the operation of the prohibitory order dated 9-3-2005.

During the pendency of the said writ petition, the 2nd respondent issued fresh proceedings dated 22-8-2005 claiming damages of Rs.1,59,879/- under Sections 7-Q and 14-B of the Act for the very same period from 4/1999 to 9/2003. Though the petitioner made a representation dated 28-9-2005 and requested the respondent to withdraw the proceedings, there was no response. Hence, the petitioner filed W.P.No.22043 of 2005 to set aside the proceedings dated 22-8-2005 being arbitrary and illegal.

Separate counter-affidavits have been filed by the respondents denying the allegations that the respondents have been demanding payments for the same period i.e April, 1999 to September, 2003. It is stated that pursuant to the order of this Court in W.P.No.11129 of 2004 the claim of the petitioner was already examined and the petitioner was informed about his liability.

I have heard the learned Counsel for both the parties.

It is to be noted that where PF contributions are not remitted within the stipulated period, the respondents are entitled to recover the interest as per Section 7-Q of the Act apart from levying penal damages under Section 14-B of the Act. The material on record shows that the determination under Section 7-A of the Act for the period from 4/1999 to 9/2003 was made after hearing the petitioner and the said order holds good as on today. In terms of the order of this Court in W.P.No.11129 of 2004, the petitioner was already furnished the necessary particulars by letter dated 21-12-2004 regarding the amount due from the petitioner under various heads. If the petitioner still disputes his liability on any ground whatsoever, it is for the petitioner to avail the statutory remedy of appeal provided under Section 7-I of the Act in which event after appreciating the material that may be produced by the petitioner the appellate authority would

pass appropriate orders in accordance with law. Without availing the alternative remedy of statutory appeal, the petitioner cannot maintain this writ petition under Article 226 of the Constitution of India.

Once the order is made under Section 7-A of the Act and the amount as determined is not paid within the time specified, the respondent is entitled to pass consequential orders under Sections 7-Q and 14-B of the Act. As a matter of fact, the appeal under Section 7-I of the Act is available even against the orders under Sections 7-Q and 14-B of the Act. Hence, the proper course would have been to avail such remedy even against the order dated 22-8-2005 by urging all the grounds including that the impugned demands are made for the same period i.e., 4/99 to 9/2003.

For the aforesaid reasons, the relief as prayed for cannot be granted in these two writ petitions.

Accordingly, both the Writ Petitions are disposed of granting leave and liberty to the petitioner to work out the appropriate alternative remedy available under the Act. It is also open to the petitioner to move an application before the appellate forum for stay of the impugned proceedings if so advised. No costs.

G. ROHINI, J.

Dt. 23-07-2007
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